

Vernonia Ordinances

DEVELOPMENT REGULATIONS

Ordinance 827

An Ordinance Relating to System Development Charges for the City of Vernonia, Amending and Restating Ordinances 819 and 717, Repealing Ordinance 657 and Declaring an Emergency

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The City of Vernonia Ordains: Ordinances 819 and 717 are hereby amended and restated as follows:

Section 1. [Purpose.] The purpose of the system development charge is to provide equitable funding for orderly growth and development in the City and to impose a portion of the cost of capital improvements for water, wastewater, drainage and flood control, streets, and parks and recreation upon those developments that create the need for or increase the demands on capital improvements.

Section 2. [Scope.] The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

Section 3. [Definitions.] For purposes of this ordinance, the following mean:

Capital Improvements. Facilities or assets used for:

- (1) Water supply, treatment and distribution;
- (2) Wastewater collection, transmission, treatment and disposal;
- (3) Drainage and flood control;
- (4) Transportation; or
- (5) Parks and recreation.

Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

Equivalent Dwelling Unit(EDU). The demand, in all aspects, exerted on public facilities equal to a single-family residential dwelling assuming 2.35 people per dwelling.

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Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this Ordinance.

Land Area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

Owner. The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

Parcel of Land. A lot, parcel, block or other tract of land that is occupied by or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

Qualified Public Improvements. A capital improvement that is:

- (1) Required as a condition of residential development approval;
- (2) Identified in the plan and list adopted pursuant to Section 8 of this Ordinance; and
- (3) Not located on or contiguous to a parcel of land that is the subject of the residential development approval; or
- (4) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

Reimbursement Fee. A fee for costs associated with capital improvements already constructed or under construction on the date the fee is adopted pursuant to Section 4 of this Ordinance, for which the City has determined that capacity exists.

System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

Use. As referred to in this Ordinance, "structure(s) and/or use(s)," means any facility, operation or action that makes use of or relies on any of the capital improvements of the City but does not involve or depend on a structure.

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Section 4. [System Development Charge Established.]

1. System development charges shall be established and may be revised by ordinance or resolution of the Council.
2. Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all parcels of development within the City, and upon all development outside the boundary of the City that connect to or otherwise use the water, wastewater, or drainage facilities of the City.

Section 5. [Methodology.]

1. The methodology used to establish or modify the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity available to future system users or the cost of the existing facilities, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
2. The methodology used to establish or modify the improvement fee shall consider the projected cost of the capital improvements identified in the plan adopted by the city pursuant to Section 8 of this Ordinance that are needed to increase the capacity of the systems to which the fee is related; the need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users; and be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.
3. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be adopted by the Council by ordinance or resolution.
4. The methodology used to establish or modify the reimbursement fee or the improvement fee shall be available for public inspection.

Section 6. [Authorized Expenditures.]

1. Reimbursement fees shall be spent only on capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

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2. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.
3. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 8 of this Ordinance.
4. Notwithstanding subsections (1) through (3) of this Section, system development charge revenues may be expended on the costs of complying with the provisions of this Ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. [Expenditure Restrictions.]

1. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
2. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. [Improvement Plan.] Prior to the establishment of a System Development Charge, the Council shall adopt a plan that:

1. Lists the capital improvements that may be funded in whole or in part, with improvement fee revenues;
2. Lists the estimated cost and time of construction of each improvement and percentage of costs eligible to be funded with revenues from improvement fees; and
3. Describes the process for modifying the plan.

In adopting this plan, the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The City may modify this project plan at any time through the adoption of an appropriate resolution, subject to the requirements in Section 14 of this Ordinance. There may be a separate plan for each system, or the plan may include improvements from more than one system.

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Section 9. [Collection of Charge.]

1. The system development charge is payable upon issuance of:
 - a. A building permit; [a development permit;]
 - b. A development permit;
 - c. A development permit for development not requiring the issuance of a building permit;
 - d. A permit to connect to the water system; or
 - e. A permit to connect to the sewer system.
2. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in use.
3. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
4. The City Clerk, or the authorized representative, shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the City is made. (Amended by ORD 749, adopted October 2, 2000.)
5. The City Clerk, or the authorized representative, shall not issue such permit or allow such connection until the charge has been paid in full, or unless an exemption is granted pursuant to Section 12 of this ordinance. (Amended by ORD 749, adopted October 2, 2000.)

Section 10. [Deleted by ORD 749, adopted October 2, 2000.]

Section 11. [Deleted by ORD 749, adopted October 2, 2000.]

Section 12. [Improvement Fee System Development Charge Methodology.]

1. The Council incorporates herein the following method for calculating system development charges, as adopted in Ordinance 717 (1997) (as amended by Ordinances 731 and 732). This procedure will apply to all uses allowed in this ordinance.

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2. The number of EDUs associated with a development will be calculated based on comparing the demands on public facilities of the development with the demand that would be exerted by a single family residential dwelling. The calculation of the number of EDUs will be performed by the Developer for the approval of the City Engineer. The Developer shall provide documentation as requested by the City Engineer. If after the development is constructed and placed into service, the City determines that the development is exerting a greater demand on public facilities than represented by the Developer, the City shall have the right to revise the EDU calculation and assess additional SDCs on the development.
3. The planning period for the calculation of improvement fee SDCs shall be 20 years.
4. Capital improvements for the calculation of Improvement Fee SDCs shall be identified in engineering studies, master plans and/or facilities plans approved and adopted by the City Council pursuant to Section 8 of this Ordinance.
5. Improvement fees shall be calculated by dividing the costs of eligible capital improvements by the anticipated 20-year population growth and multiplying that number by 2.35 to convert it to EDUs. For all non-single family residential development, the SDC shall be calculated by multiplying the per EDU SDC by the number of EDUs associated with the development.
6. The System Development Charges shall be adjusted annually according to the News Record Construction Cost Index adopted by the City in Ordinance 717.

Section 13. [Exemptions.]

1. Structures and uses established and existing as of April 5, 1999 are exempt from a system development charge, except water and sewer system development charges, to the extent the structure or use then existed. The exemption shall be limited to the parcel of land as it exists on that date. Structures and uses affected by this subsection shall pay the water or sewer system development charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
2. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
3. An alteration, addition, or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.

4. A replacement of a structure or use that was existing as of April 5, 1999 and that does not increase the parcel's or structure's use of the public improvement facility is exempt from all portions of the system development charge.

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5. A project financed by City revenues is exempt from all portions of the system development charge.
6. A request for an exemption shall be submitted to the City Clerk, and a determination of the applicability of this section to the subject parcel will be made by the City Administrator, or authorized representative.

Section 14. [Credits.]

1. A system development charge shall be imposed when a change in use of a parcel or structure occurs, but a credit shall be given against the computed system development charge to the extent that an SDC has been imposed and paid for the existing structure(s). The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
2. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required, however, no refund or credit shall be given unless provided for by another subsection of this section.
3. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the improvement. The credit provided for in this subsection shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements may be granted only for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.
4. When establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital

improvements, or a credit based upon any other rationale the Council finds reasonable.

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5. When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.
6. Credits shall not be transferable from one development to another.
7. Credits shall not be transferable from one type of system development charge to another.
8. Credits shall be used within 10 years from the date the credit is given.

Section 15. [Notice.]

1. The following Notice Provisions apply when the City proposes a modification to the Plan, adopted pursuant to Section 8, to include a capacity increasing capital improvement which will increase a system development charge.
 - a. The City shall provide notice of the proposed modification to the persons who have requested written notice, pursuant to Section 2, at least 30 days prior to the adoption of the modification.
 - b. The City shall hold a public hearing if the local government receives a written request for a hearing on the proposed modification within seven (7) days of the date the proposed modification is scheduled for adoption. A public hearing is not required if the local government does not receive a written request for a hearing.
 - c. The City's decision to modify the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.
2. The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge.
 - a. The City shall mail notice to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge;
 - b. The City shall make the methodology supporting the system development charge available at least 60 days prior to the first hearing;
 - c. The failure of a person on the list described in this section to receive a notice that was mailed shall not invalidate the action of the City;
 - d. The City may periodically delete names from the list described in this section but the City shall notify the person whose name is to be deleted that a new

written request for notification is required if the person wishes to remain on the notification list.

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3. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:
 - a. A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to Section 8;
 - b. The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
 - i. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
 - ii. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
 - iii. Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

Section 16. [Segregation: Use of Revenue]

1. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the City. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 6 of this Ordinance.
2. The City Finance Clerk, or the authorized representative, shall provide the City Council with an annual accounting, based on the City's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

Section 17. [Appeal Procedure.]

1. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision of the expenditure to the City Council by filing a written request with the City Recorder, or the authorized representative, describing with particularity the decision of the authorized City representative, and the expenditure from which the person appeals. An appeal of

expenditure must be filed within two (2) years of the date of the alleged improper expenditure.

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2. A person may appeal any other decision of an authorized City representative under this ordinance by filing a written request for appeal with the City Recorder, or the authorized representative, describing with particularity the decision from which the person appeals, within ten (10) days of the date of the decision. (Amended by ORD 749, adopted October 2, 2000.) A person who makes a written objection to the calculation of a system development charge has the right to petition for review pursuant to ORS 34.010 to 34.100.
3. After providing notice to the appellant, the Council shall determine whether the authorized City representative's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the Council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that sum equal to the misspent amount shall be deposited within one (1) year to the credit of the account or fund from which it was spent. (Amended by ORD 749, adopted October 2, 2000.)
4. A legal action challenging the methodology adopted by the Council pursuant to Section 5 shall not be filed later than sixty (60) days after the adoption or modification of the system development charge, ordinance or resolution. A person shall request judicial review only as provided in ORS 34.010 to 34.100, or as it may be amended from time to time.

Section 18. [Prohibited Connection.] No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid.

Section 19. [Penalty.] Violation of Section 18 of this ordinance is punishable by a fine not to exceed \$50.00, each day's violation to be considered a separate offense.

Section 20. [Construction.] The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 21. [Severability.] The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 22. [Effective Date.] Under the provisions of the City of Vernonia Charter of 1998, Chapter VIII, Section 32, the Council finds that it is necessary for the peace, health, and safety of the City and its citizens that this ordinance take effect immediately upon its passage and approval by the Mayor and an emergency is therefore declared to exist.

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Section 23. [Recorder's Duties.] The City Recorder is hereby directed, upon its adoption and authentication, to number this ordinance as the next adopted ordinance of the City of Vernonia.

Section 24. [Repealer.] City Ordinance No. 657 (as amended) relating to System Development Charges is hereby repealed.

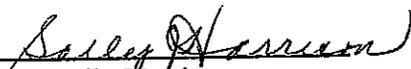
ADOPTED as read by title only this 17th day of April 2006, by the following vote:

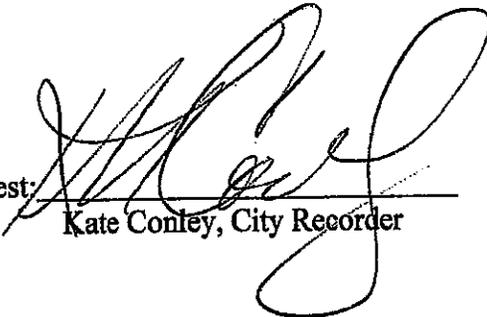
AYES: 5 NAYS: _____ ABSTAIN: _____ ABSENT: _____

ADOPTED as read by title only this 17th day of April 2005, by the following vote:

AYES: 5 NAYS: _____ ABSTAIN: _____ ABSENT: _____

Approved this 17th day of April, 2005.

Signed: 
Mayor Sally Harrison

Attest: 
Kate Conley, City Recorder